



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,992	12/07/2005	Ricky R. Ruschke	396/470	6437
28441 7590 11/05/2008 BRINKS HOFER GILSON & LIONE/UTAH UTAH OFFICE 405 South Main Street Suite 800 SALT LAKE CITY, UT 84111-3400				
EXAMINER				
FRISTOE JR, JOHN K				
ART UNIT		PAPER NUMBER		
3753				
MAIL DATE		DELIVERY MODE		
11/05/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/559,992

Applicant(s)

RUSCHKE ET AL.

Examiner

JOHN K. FRISTOE JR

Art Unit

3753

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 14-18, 20-23, 25-31, 34-37, 43, 48, 49, 54, 62-64, 78, 79, 80, 81, 84, 85, 86, 87, 89, 90, 91, 93, 94-97, is/are allowed.
- 6) ☒ Claim(s) 2, 41, 65, 82, 83, 92 and 125 is/are rejected.
- 7) ☒ Claim(s) 53 and 126-130 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of Reference Cited (PTO 882)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO 413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 2,5,14-18,20-23,25-31,34-37,41,43,48,49,53,54,62-65,78-87,89-97 and 125-130.

DETAILED ACTION

Response to Arguments

1. Applicants' arguments filed 8/14/2008 have been fully considered but they are not persuasive. Applicants first argue that Marino does not disclose a wiper seal. The examiner disagrees. The sides and bottom of the piston of Marino can be considered a wiper seal. Applicant then argues that Marino can not be modified by the luer connector teachings of Leinsing, the examiner disagrees. Marino discloses an assembly that is capable of being connected to medical fittings. These fittings can be modified to include a luer connector as taught by Leinsing. Since any changes to the following prior art rejections were necessitated by Applicants' amendment, the instant Office action has been made final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2, 41, 65, 82, 92, and 125 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,634,434 (Marino, Jr. et al.). Marino, Jr. et al. disclose a needlefree access device comprising a housing (26), an inlet (15), a base (23), a generally cylindrical inside surface (within element 26), a valve member (29, 33), an outlet (16), a central body (20), a helical shape (28), wherein the central body (20) fits against the inside surface (within element 26), a helical flow path (30), wherein the device (figure 3) is suitable for transferring medical fluids, a piston

(29), a wedge member (start of helix 28) in figure 3), an IV bag (13) and a wiper seal (end and side portions of element 20).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,634,434 (Marino, Jr. et al.) in view of U.S. Pat. No. 6,802,490 (Leinsing et al.). Marino, Jr. et al. disclose a needlefree access device comprising a housing (26), an inlet (15), a base (23), a generally cylindrical inside surface (within element 26), a valve member (29, 33), an outlet (16), a central body (20), a helical shape (28), wherein the central body (20) fits against the inside surface (within element 26), a helical flow path (30), wherein the device (figure 3) is suitable for transferring medical fluids, a piston (29), a wedge member (start of helix 28) in figure 3), and an IV bag (13) but lacks the inlet having a luer taper. Leinsing et al. teaches a medical connector having an inlet (28) with a luer taper. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the needless access device of Marino, Jr. et al. by adding a luer taper to the inlet as taught by Leinsing et al. in order to connect a luer fitting.

Allowable Subject Matter

6. Claims 5, 14-18, 20-23, 25-31, 34-37, 43, 48, 49, 54, 62-64, 78-81, 84-87, 89 and 93-97 are allowed.

7. Claims 53 and 126-130 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,287,289 (Niedospial, Jr.) discloses a IV bag with a connector.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Fristoe Jr. whose telephone number is (571) 272-4926. The examiner can normally be reached on Monday-Friday, 7: 00 a.m-4: 30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John K. Fristoe Jr./
John K. Fristoe Jr.
Primary Examiner
Art Unit 3753

JKF